



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on February 13, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST 2004-17116

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: VOLGA-DNEPR J.S. CARGO AIRLINE

Date Filed: February 12, 2004

Relief requested: Exemption from 49 U.S.C. section 40109(g) to permit the applicant to operate two, one-way, cargo charter flights from Honolulu, Hawaii, to Milwaukee, Wisconsin, through February 21, 2004, using its AN-124-100 aircraft to transport six rail-coach cars (three per flight), on behalf of Siemens Automation. The applicant stated that Siemens, due to unanticipated delay in the shipment schedules of this cargo, now urgently needs lift to get the cargo to the Chicago area for the National Manufacturing Week display (starting February 23, 2004); that the cargo is too large for transportation on U.S.-carrier aircraft; and that ocean transportation is not feasible because of the long time period that such mode of transportation would take.

Applicant representative: Glenn P. Wicks, 202-457-7790

DOT analyst: Allen F. Brown, 202-366-2405

Responsive pleadings: Volga-Dnepr served its application on those U.S. carriers operating large, all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operation and that it had no comment or did not oppose grant of the requested authority.

Statutory Standards: Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (*i.e.*, cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, was not relevant here).

DISPOSITION

Action: Approved

Action date: February 13, 2004

Effective dates of authority granted: February 13, 2004, through February 21, 2004

Basis for approval: We are granting Volga Dnepr's request to operate its two proposed one-way flights from Hawaii to Milwaukee, through February 21, 2004. We found that it met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type and that the grant was required in the public interest. Specifically, we were persuaded that the need to move the cargo promptly, following unanticipated delay in the shipment schedules, in order to get the cargo to the Chicago area for the manufacturing display (starting February 23, 2004), the fact that the cargo currently cannot be transported by ocean transportation because of the long time period such movement would entail, the potential negative impact of delivery delay; and the unique, outsized nature of the cargo, constituted an emergency not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available that could be used to conduct the operation at issue here. We also found that, under the circumstances, grant of this authority would prevent unreasonable hardship to Siemens Automation. Finally, we found that the applicant was qualified to perform its proposed operation.

Except to the extent exempted/waived, this authority is subject to our standard exemption conditions and to the condition that the applicant comply with an FAA-approved flight routing for the authorized flight.

Action taken by: **Karan K. Bhatia**
 Assistant Secretary
 for Aviation and International Affairs

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